

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**PLANET GROUP, INC., a Nebraska  
corporation;**

**Plaintiff,**

**vs.**

**KIMBERLI GEIKEN,**

**Defendant.**

**8:17CV169**

**MEMORANDUM AND ORDER**

This matter is before the Court on the parties' Stipulation for Consolidation, ECF No. 21. The Stipulation was entered into by Plaintiff Planet Group, Inc. (PGI); Defendant Kimberli Geiken; Trustee Thomas D. Stalnaker, on behalf of Planet Merchant Processing, Inc. (PMP); and EVO Merchant Services, LLC's (EVO). The parties jointly request an order (a) adding PMP as a Plaintiff and EVO as a Defendant in this case; and (b) consolidating the above-captioned action with the adversary proceeding originally styled *Planet Merchant Processing, Inc. v. Kim Geiken and EVO Merchant Services, LLC*, Case No. 17-AP-8002, United States Bankruptcy Court for the District of Nebraska (the "EVO Action"), for all pre-trial purposes, including discovery.

**BACKGROUND**

On January 27, 2017, PMP filed the EVO Action as an adversary proceeding as part of *In Re Planet Merchant Processing, Inc.*, Case No. BK 16-81243, in the United States Bankruptcy Court for the District of Nebraska. On April 14, 2017, PGI filed this action against Geiken in the District Court for Douglas County, Nebraska. ECF No. 2-1. On May 18, 2017, Geiken removed the case to this Court. ECF No. 1.

On May 22, 2017, Geiken filed a Motion to Dismiss the EVO Action, which was premised on the argument that PGI was a necessary party. On May 25, 2017, Geiken filed a Motion to Dismiss in this action, premised on the argument that PMP was a necessary party to this case. ECF No. 5.

On June 28, 2017, the bankruptcy trustee for PMP filed a Motion to Withdraw the Reference relating to the EVO Action. On August 7, 2017, the Honorable Thomas L. Saladino, Chief Judge of the United States Bankruptcy Court for the District of Nebraska, entered an Order deferring decision on Geiken's Motion to Dismiss the Adversary Proceeding until the Court had ruled on the Motion to Withdraw Bankruptcy Reference. On August 8, 2017, the Bankruptcy Judge entered a Findings and Recommendation to this Court. In the Findings and Recommendation, the Bankruptcy Judge wrote "[j]udicial economy dictates that the two cases should be processed and heard together, and the forum to do so is the United States District Court" and recommended withdrawal of the reference of the adversary proceeding. ECF No. 16.

On October 4, 2017, the Court entered an Order adopting the Findings and Recommendation and ordered PGI to respond to the Motion to Dismiss by October 26, 2017. ECF No. 19. On October 26, 2017, the parties jointly filed their stipulation.

### **DICUSSION**

The Court agrees with the Bankruptcy Judge that these cases "arise from the same set of facts and circumstances and the issues of law are similar, if not identical." ECF No. 16. The record and the Stipulation demonstrate that this action and the EVO Action involve certain common questions of law and fact and much of the same evidence, witnesses, and issues. Thus, consolidation of this case and the EVO Action

advances judicial economy and is not expected to result in inconvenience, or unfair prejudice to any of the parties. To the contrary, progression for both cases is greatly advanced through consolidation. Accordingly, the Stipulation will be approved and the cases will be consolidated all pre-trial purposes, including discovery.

IT IS ORDERED:

1. The parties' Stipulation for Consolidation, ECF No. 21, is approved;
2. The Clerk of Court is directed to add Planet Merchant Processing, Inc. as a Plaintiff in this case;
3. The Clerk of Court is directed to add EVO Merchant Services, Inc. as a Defendant in this case;
4. This case is consolidated with *Planet Merchant Processing, Inc. v. Kim Geiken and EVO Merchant Services, LLC*, Case No. 17-AP-8002, previously pending in the United States Bankruptcy Court for the District of Nebraska, for all pre-trial purposes, including discovery;
5. Defendant Kimberli Geiken's Motion to Dismiss in this case, ECF No. 5, and the Motion to Dismiss, previously filed in Case No. 17-AP-8002, are denied as moot; and
6. Defendant Kimberli Geiken must file an answer to the Complaint in this case and an answer to the Complaint in *Planet Merchant Processing, Inc. v. Kim Geiken and EVO Merchant Services, LLC*, Case No. 17-AP-8002, ECF No. 1 (filed Jan. 27, 2017), within twenty-one (21) days of the date of this Order.

Dated this 1<sup>st</sup> day of November, 2017.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge